

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FRANCINE A. McGEE,

Plaintiff,

v.

CITIMORTGAGE, INC., et al.,

Defendants.

Case No. 2:14-cv-00335-JCM-GWF

ORDER

Presently before the court is plaintiff Francine McGee's motion for reconsideration. (Doc. # 28). Plaintiff requests that the court reconsider its July 25, 2014 order dismissing both of plaintiff's claims against defendants. (Doc. # 27). Defendants Nationstar and CitiMortgage filed oppositions. (Docs. ## 30, 31). Plaintiff did not file a reply.

I. Background

Plaintiff purchased real property located at 6583 Mermaid Circle in Las Vegas, Nevada in September 2006 for \$432,500. (Doc. # 1-1 at ¶¶ 1, 8). Plaintiff secured financing for the purchase from PHH Mortgage Company with first and second mortgages. (Doc. #1-1 at ¶¶ 10-11). The first mortgage loan was a 30-year promissory note in the amount of \$346,000, secured by a deed of trust on the property. *Id.* The second mortgage loan was a 15-year promissory note in the amount of \$43,250, also secured by a deed of trust on the property. *Id.* Both deeds of trust named PHH Mortgage as the lender, First American Title as trustee, and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary. (Doc. # 1-1 at ¶ 12)

On or about November of 2008, CitiMortgage represented to plaintiff that it was the servicer of her loans. (Doc. # 1 Ex. A at ¶ 14). In October 2009, MERS assigned the beneficial interest in the property to CitiMortgage, (doc. # 5 p. 2), and First American Title substituted Cal-

1 Western Reconveyance Corporation (Cal-Western) as trustee. (Doc. # 5 p. 2). On October 22,
 2 2009, Cal-Western recorded a notice of default with the Clark County recorder. (Doc. #1-1 at ¶
 3 16, doc. # 5 p. 2). On April 28, 2010, Cal-Western conducted a trustee sale. The trustee's deed
 4 upon sale conveyed the title to Fannie Mae for \$357,705.43. (Doc. # 21 p. 2).

5 Fannie Mae filed a notice of rescission of the trustee's deed upon sale with the Clark
 6 County recorder on November 7, 2011. (Doc. #1-1 at ¶ 26). Cal-Western and Fannie Mae
 7 canceled and rescinded the trustee sale due to "inadvertence and mistake." (Doc. #4 p. 2). The
 8 rescission purported to reinstate the deed of trust as though the trustee's deed upon sale had never
 9 been issued or recorded. (Doc. # 1-1 Ex. 6).

10 Plaintiff has alleged two causes of action: (1) quiet title and (2) declaratory relief that the
 11 property is vested in her free and clear of any encumbrances. (Doc. # 1-1 p. 9). This court's July
 12 25, 2014 order granted defendants' motions and dismissed both claims. (Doc. # 27).

13 **II. Legal Standard**

14 Under Rule 60(b), a court may relieve a party from a final judgment, order or proceeding in
 15 the following circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
 16 discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or
 17 (6) any other reason justifying relief from the judgment. *Backlund v. Barnhart*, 778 F.2d 1386,
 18 1388 (9th Cir. 1985); *see also De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th
 19 Cir. 2000) (noting that the district court's denial of a Rule 60(b) motion is reviewed for an abuse
 20 of discretion).

21 While a motion for reconsideration allows a party to bring a material oversight to the
 22 court's attention, it is not appropriate for a party to request reconsideration merely to force the
 23 court to "think about [an] issue again in the hope that [it] will come out the other way the second
 24 time." *Teller v. Dogge*, 2013 WL 508326, at *6 n.6 (D. Nev. 2013); *see also Palmer v. Champion*
 25 *Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006).

26 **III. Discussion**

27 Plaintiff fails to satisfy the legal standard to warrant the court's reconsideration of its order
 28 granting dismissal. Plaintiff fails to address either claim dismissed by the July 25, 2014 order.

1 Instead, plaintiff argues that reconsideration is warranted because of newly discovered evidence
2 supporting plaintiff's fraud claim. Plaintiff has not made a claim for fraud in this action.
3 Accordingly, this court's July 25, 2014 order did not address fraud. Even if the deposition
4 testimony proffered by plaintiff is newly discovered evidence, which the court need not consider,
5 it has absolutely no bearing on plaintiff's claims for quiet title and declaratory relief. The
6 testimony goes only to alleged misrepresentations made by CitiMortgage representatives to
7 plaintiff. (Doc. # 28 p. 3-6).

8 In Nevada, the rescission of a contract generally restores the parties to the status quo. *See*
9 *Mackintosh v. California Federal Sav. & Loan Ass'n*, 935 P.2d 1154, 1163 (Nev. 1977). "To place
10 a party in status quo means to place such party in the same position as he was situated in at the
11 time of the execution of the contract." *Id.* (quoting 17A C.J.S. Contracts § 438 (1963)).

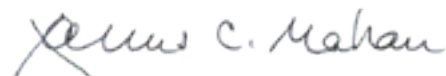
12 Cal-Western and Fannie Mae rescinded the trustee's deed upon sale. Therefore, the parties
13 returned to the same positions there were in before the execution of the trustee's deed upon sale.
14 As such, any encumbrance on the property remains unchanged. (Doc. # 27 p. 3). Plaintiff's motion
15 for reconsideration does not allege any new facts to support that the trustee's deed of sale was
16 defective. Likewise, plaintiff has not offered any new evidence or points and authorities to support
17 her claim that the sale or subsequent rescission somehow extinguished any encumbrances on the
18 property. Because plaintiff has provided no newly discovered evidence to support her claims for
19 quiet title and declaratory relief, reconsideration of the court's decision to dismiss those claims is
20 not warranted.

21 **IV. Conclusion**

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Francine
24 McGee's motion for reconsideration, (doc. # 28), be, and the same hereby is, DENIED

25 DATED THIS 27th day of October 2014.

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28 JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE